

Approved as amended.
OPEN SPACE BOARD OF TRUSTEES
Minutes
March 26, 2003

BOARD MEMBERS PRESENT

Ken Dunn Sean Kendall Linda Jourgensen Bruce Bland

STAFF PRESENT

Mike Patton Jim Tydings Jim Reeder Ronda Romero
Delani Wheeler Dave Kuntz Lara Beckett Ann Goodhart

CALL TO ORDER

The meeting was called to order at 6:06 p.m. It was noted that the agenda was changed to reflect an additional item, West Nile Virus, a presentation from Boulder County staff to discuss the control and monitoring of mosquitoes.

AGENDA ITEM 1 – Public Participation/Items Not on the Agenda

Public participation was delayed until later in the meeting to accommodate citizens who wished to address the board. No other members of the public had matters to discuss.

Farewell to Linda Andes-Georges

Linda Andes-Georges, having spent approximately seven years as a member of the Open Space Board of Trustees (OSBT), was presented with a plaque from Linda Jourgensen and Mike Patton to show appreciation for her many years of service to Open Space and Mountain Parks (OSMP). Linda served the first two years to fill out another member's appointment, and then served a regular five-year term. Her wide variety of interests included the proposed tower on Eldorado Mountain and birds. Linda Jourgensen read an e-mail from Linda Andes-Georges stating, "Somebody has to fill that Bruce slot out in the audience, especially since Ricky is no longer with us." Linda Andes-Georges presented a collection of acronyms to the new board member, Bruce Bland, and wished him success. Bruce expressed his admiration and thanks for the job done by Linda Andes-Georges over the past seven years, in particular, the energy she put into researching various subjects. A round of applause was given to Linda Andes-Georges.

AGENDA ITEM 2 – Approval of Minutes

Regarding the Boulder Junior Academy, Linda Jourgensen had requested that the following sentence be removed from the minutes: "Larry MacDonnell added that if the contract does not go through a proposition could come back from the neighborhood as a request to purchase property above the Silver Lake Ditch." The motion had already passed, and the point was moot, since OSMP already owns the property above Silver Lake Ditch.

Sean Kendall moved that the minutes of March 12, 2003 be approved as amended. Ken Dunn seconded the motion. It passed unanimously.

AGENDA ITEM 3 – Director's Updates
Visitor Plan Advisory Committee (VPAC)

Dave Kuntz announced the upcoming meetings for the VPAC. A field trip is scheduled for Sunday, March 30, 2003 from 2:00 to 6:00 p.m. departing from Cherryvale, and will tour the southern part of the system, including Marshall Mesa and the South Mesa Trailhead, and Lindsay Eldorado Mountain area to observe a number of management issues and some potential management designations. It has been advertised in the paper and on the web site, and public participation is anticipated. April 7th is a Community Forum at the Annex (on 75th between and Arapahoe and Valmont) from 5:00 to 9:00 p.m. It is anticipated that 10-11 community groups will present information that is of importance to them and to the advisory committee, and opportunity for discussion will follow among members of the committee, the public, and group representatives. Staff will be drafting a commercial use policy and management strategy development for the committee to review at the April 22nd meeting.

TABOR Clarifications

Jim Tydings talked about the Taxpayer's Bill of Rights amendment (TABOR) which is referred to as the Bruce Amendment. TABOR was enacted in January 1993. In March, 1993, Council passed Ordinance No. 3-2-41, which has been classified as "de-brucing". The general understanding of "de-brucing" is to allow a governmental entity to retain revenues that have been collected with a tax increase in excess of what has been listed as the potentially designated collected amount. It does not regulate how the money is going to be spent. The language that is in the proposed sales tax ordinance (and has been in other tax ballot issues) contains "de-brucing" language. When the original city ordinance was passed, it was passed with the intention to deal with those tax collection ballot issues that had already been before the voters. There is uncertainty whether or not the "de-brucing" provision of TABOR would be effective on future revenue issues. It has been the position of the City Attorney that the "de-brucing" language would be put in all subsequent tax ballot issues in order to avoid any potential litigation that could decrease the city's ability to retain approved funds. It is also the position of the City Attorney to include the language up front, even though it could be presented to the voters after one year of passage of the ballot issue.

Jim Tydings read from "A Guide to the Tax Payers Bill of Rights" (1999). In particular, the single, most radical change brought about by TABOR was its limitation on the annual growth of municipal revenues. It does not limit the amount of money that may be budgeted or appropriated. It does not limit the amount of money that may be spent. Instead, it limits the amount of revenue that may be retained in any particular year from sources, including both taxes and fees, according to a rigid, one-size-fits-all revenue cap, and requires a refund of the excess revenue received in any particular year absent voter approval to keep the excess. Voters can vote against a refund taking place. Governmental entities have mostly prevailed against any challenges in dealing with these funds. Ken Dunn asked whether a ballot initiative is "de-bruced" for the life of the term it is being taxed, and whether we have that language in the sales tax initiative. Jim confirmed that the language "de-bruces" the measure for the life of the term.

Jim provided further information. "De-brucing" is something that happens to a local government's excess revenue, not to the government itself. It is voter approval to keep and spend revenue in excess of TABOR's limitations. If government receives such approval, it is still fully subject to all the other limitations set forth in the statute. The "Guide" is available in the city attorney's office for further review.

Bruce Bland asked if the rate of inflation affected whether the excess revenues kick in. Jim explained that “de-brucing” was introduced during high growth periods in the 1990s to deal with excess revenues. Delani pointed out that for Colorado, if revenues go down, the new base gets tagged to a lower amount. Therefore, the “de-brucing” clause prevents government from having to return to the voters any excess from a lower base in a slow economy.

Linda Jourgensen asked for clarification on the particular vote which occurred in March of 1993. Delani responded that the vote affected previous years’ sales tax revenues, but can check the legislative history if more clarification is needed. (Note: There was a successful city-wide vote on “de-brucing” in November 1993.)

Jim Tydings further stated that the city attorneys office has agreed to have ballot initiative wording reviewed by outside counsel (Kutak and Rock, LLC).

AGENDA ITEM 4 – Matters from the Board

Ken Dunn spoke about elk that were tested in Wisconsin for Chronic Wasting Disease (CWD) have been confirmed positive for the disease, and that the spread of the disease has moved from deer to elk. He questioned how this discovery might affect Boulder. Mike Patton responded that this finding is not a huge surprise, and that the disease is also in commercial elk herds in Colorado and in one commercial herd in Boulder County. Because of this, neighboring states prohibit the importation of domestic elk from Colorado.

Bruce Bland was concerned about *addresses* being posted to the website and privacy issues which could arise from this practice. He wondered if reciting addresses was necessary, and whether just names and the city or county of residence could be posted instead. Mike Patton will check into this issue. It was noted that the written minutes are considered only a transcription of the official record on tape. Mike will inform the board with results after he conducts research.

Sean Kendall asked whether there will be a cut in the administrative transfer since a new city manager is in office. Mike Patton has not heard any indication that there will be a cut, and doubts that there will be one, but offered to follow up. This subject will be discussed at the OSBT Retreat to take place on Saturday, April 12, 2003 at the Cherryvale Office from 8:00 a.m. to mid-afternoon.

AGENDA ITEM 5 – Election of Officers

Bruce Bland read the OSBT oath aloud and signed it. He was welcomed by staff and the rest of the board.

Officers were elected as follows:

Sean Kendall nominated Linda Jourgensen for Chair. Ken Dunn seconded. It passed unanimously with no discussion. Ken Dunn nominated Sean Kendall for Vice Chair. Linda Jourgensen seconded. It passed unanimously without discussion. Sean Kendall nominated Mike Patton as Board Secretary. Ken Dunn seconded. It passed unanimously without discussion.

AGENDA ITEM 6 – West Nile Virus Update

Chuck Stout, Director, Boulder County Health Department and its staff were invited by OSMP to present an informational update on the West Nile Virus. This matter will return to the board when there is a city-wide recommendation to be made.

Heath Harmon, Boulder County Public Health Service Epidemiologist, presented the first part of the power point presentation showing geometric progressions of the disease in the country during the past two to three years, and discussed forecasting the risk for 2003. (A hard copy of the presentation is available.) Joe Malinowski, Consumer Protection Coordinator for the health department, talked about integrated pest management (IPM) in the County and areas of concern with suggested recommendations, such as larvaciding. Jeff Zayach, Environmental Health Program Manager, was present to answer questions on policy if needed.

Joe Malinowski read a letter from Mike Patton to the Greenbelt Meadows Homeowner's Association dated 2001 regarding nuisance mosquitoes and the OSMP department's policy to typically avoid treatment. "However, I want to assure you, that in the case of a mosquito-borne disease outbreak, this policy is abandoned, and the city will do its part to control mosquito populations." Further on in the letter it reads, "As I stated, should we be notified of the potential for an outbreak of encephalitis or any other mosquito-borne disease, we intend to fully cooperate with the Boulder County Health Department relative to mosquito control."

Ken Dunn asked whether the mosquitoes in an urban area are more likely to be carrying the disease than those located in a wilderness area. Joe responded that the *culex* species likes to breed more in standing water than in flood water, so it depends on whether the area has more prevalence of standing versus moving water. However, there is some overlap for the species between the areas.

Linda Jourgensen asked for clarification about "larvaciding", and Joe explained that the preference is to locate and treat the larva before having to spray for an emergence of adult mosquitoes on human populations. Larvaciding is much more effective than killing adult mosquitoes.

Chuck Stout pointed out two main concerns with the city and the OSMP department: (1) the control plan for Boulder County is undermined without inclusion of city open space lands, and (2) if the County is unable to treat city open space with larvacide, then use of the adulticide presents a less-desireable option. The County cannot do effective mosquito control without the participation of the city.

Return to Board and Staff

Linda Jourgensen mentioned that the board has concerns about the subject and how effective the control measures are, and that OSMP staff intends to visit Colorado State Center for Disease Control to gather more information. Mike Patton stated that this issue will come back to the board as an action item, and that OSMP would act in concert with the city IPM Coordinator, Alice Guthrie, who was present in the audience.

Bruce Bland asked whether any studies have been performed among human populations to determine why some die from the virus and some don't. Heath Harmon responded that certain populations are more susceptible to the disease – those above 50 and those with lower immune functioning.

Sean Kendall asked if the County intends to encourage Boulder's citizens to change personal habits regarding mosquitoes, since the prevalence of mosquitoes is lower in this area compared to the east coast. Mr. Harmon answered that a state-wide educational effort is being implemented by the State Health Department to reach the entire population about West Nile Virus prevention. Sean also asked whether there were different mosquito species in the Rocky Mountain National Park region (higher elevations) versus lower elevations. Joe Malinowski answered that the *culex* species are reported more in the lower elevations. Finally, Sean asked what policy exists for jointly owned (city and county) property. Staff answered that either the city or the county is responsible for managing the property (depending on the circumstance). Regarding who would have the right to spray, Mike would have to check.

Ken Dunn observed that a friend in excellent health in the Evanston, Illinois area contracted the virus, and it took her six months to fully recover. He feels the situation needs to be taken very seriously. Mr. Harmon commented that mosquito-borne viruses are very cyclical, and they occur in patterns. Over time, one may be exposed to West Nile Virus and acquire immunity. He mentioned the possibility of "window periods" of three to five years during which portions of the human population could develop immunity, and mosquito control plans at that time can be revisited. He recommended to control now in order to weather the storm for the next few years.

Public Participation

None.

AGENDA ITEM 1 - Public Participation/Items Not on the Agenda

Jessica True, 29 Silver Spruce; read a letter to the board explaining what transpired on March 22, 2003. Mark Rolofson was also present.

We are writing to complain about an incident with city Open Space and Mountain Parks Rangers, Jerry Katapodes and David Gustafson on the morning of Saturday, March 22, 2003 in the Basemar Shopping Center parking lot. To explain the circumstances, Jessica True distributed a flyer at a peace rally in Boulder, asking people to come express their feelings about a war by moving the snow on open space land to write "no war". It specified that we would leave no trace. Her name and phone number were listed on the flyer. We arrived separately a few minutes apart in front of Wild Oats and saw open space Rangers and their vehicles waiting there. Mark observed the Rangers start standing outside their trucks, and he and I met inside the store for a moment to shop. When we came out the Rangers were still standing there. Feeling threatened and fearing a confrontation, I left the area in my car, and Mark was confronted immediately by two Rangers, (Officer Katapodes and Officer Gustafson).

Officer Katapodes asked, "Are you part of a peace group who wants to hang a banner on Flagstaff?"

Mark stated, "No, there are no plans to hang a banner or sign, but what was planned was to build letters, such as a peace sign in the snow, from the snow."

Officer K. asked, "Where are you planning on doing this?"

Mark responded, "That hasn't been decided."

And the officer said, "You can't do it on open space."

Mark asked why, and the officer stated that "forms of political demonstration are not allowed on open space."

At this point, Mark explained exactly what we had planned, and that we planned to build letters, sort of like a big snow man, and we would not "expose the dirt, trample any vegetation, and the intention is to leave no trace."

The officer then said, "It's illegal to build any sort of structure on open space."

Mark then pointed out, "it will melt. So you are telling me it is illegal to build a snowman?"

To which the officer replied, "Yes, it's technically illegal to build a snowman."

Mark then asked, "Can I get a special permit to build letters in the snow?"

The officer then stated, "No, you would have to go through City Council first, and by then, all the snow would be melted. We suggest you find private property who will allow it."

Yesterday, I left a detailed message for Mike Patton regarding this incident, and he didn't call me back. I spoke at length with (OSMP) Public Information Coordinator, Cathy Vaughan-Grabowski regarding this incident, and I also called the City Attorney's Office and was referred to and spoke to the prosecuting attorney, Erin O'Brien, about whether it is indeed illegal to build a snowman on open space land, even if it is in the shape of a peace sign. It has since been clarified by all of the above, except Mike Patton, because he didn't return my call, that it is not illegal to build anything decorative from only the snow. As a result of the Rangers' acts, we felt threatened and intimidated. We believe that they acted unlawfully and deliberately with the intention of stopping us from expressing our opinion. We believe their actions were a violation of the First Amendment, which guarantees freedom of speech, because we were intimidated and illegally prohibited from expressing our opinions and exercising our constitutional rights in a reasonable and lawful manner. We would like Open Space to write a letter of apology to us for abridging our rights to be published in the Daily Camera. We believe also that Officer Katapodes and Officer Gustafson should be censured by the OSMP and receive appropriate disciplinary action for lying to and intimidating us into not pursuing a legal expression of our thoughts and feelings about the war on Saturday, March 22, 2003. Also, we request that the OSMP display on their signs, web sites, and in printed material, not just the rules that we must follow, but also our rights, such as the freedom of speech and assembly as they are guaranteed under our Constitution. We ask that the web site be updated within two weeks of this letter, and the printed material as it is replaced or within one year. Maybe then, Rangers such as these two officers, who unlawfully intimidated us and stopped us from expressing ourselves, will take it upon themselves to defend not just our resources, but also our basic civil rights. We hope we are able to resolve this quickly and reasonably as stated above. If not, we will be contacting our attorneys, the ACLU, and other organizations to assist us in ensuring that this type of behavior does not occur again.

And I have a copy of the flyer which had my name and phone number on it, which also says leave no trace on it. Unfortunately, apparently, whoever tipped off the Rangers didn't have the flyer and so they did not just call me and ask me what this was about. Thank you.

Linda Jourgensen asked whether there were any questions for Miss True.

Mike Patton introduced himself and stated that he did not return her call because she had already spoken several times with Cathy Vaughan-Grabowski, and it was understood Cathy would be dealing with her unless Miss True felt a more specific need to talk with Mike. Mike emphasized that he would, of course, be available to call her back. He said that our Rangers had no expectation or intention of stopping a demonstration, but had gone to have a conversation that was hoped to be helpful, and to help the citizens express their interest in a way that was both safe and reasonably consistent with open space interests. Mike apologized if that was not the way it came across.

Mark Rolofson, P.O. Box 732, the other party quoted in the letter, stated:

I had a friendly conversation with the Rangers. We talked for probably about five minutes. I was first told, to reiterate the letter, that no political form of demonstration was allowed on the land, on open space land, and secondly, that the letters would be considered a structure to cite the second violation, and the advice was to find private property. So, if the Rangers are claiming otherwise, I think it's disgraceful personally, because it's not the truth. That's what I'd like to say. Thank you.

Return to Board and Staff

Ken Dunn asked whether it was stated policy that there is no political demonstration on open space. Mike Patton responded that there is no such policy.

Miss True reiterated that the purpose of the letter was to point out that the citizens have rights to express themselves and to assemble in numbers less than 50 people on open space land in a way that does not harm anything, and that they were following the rules. She referred to a balance between stating the rules as well as stating the rights.

Sean Kendall suggested that Miss True meet with some of the naturalist staff. Sean pointed out the existence of big management problems (especially at Chautauqua Meadows), and would appreciate OSMP staff to be made available to talk with Miss True about some of the issues associated with doing such activities on open space land versus using a park. Sean mentioned the damage that occurs from human activity off-trail, and Miss True pointed out that intent was to do the activity on the snow, not the land. Mark and Jessica said they were possibly planning on using the more barren hills had the meeting place not been shut down first. Mark added that they felt this political activity was appropriate because the amount of snow presented a unique opportunity, and there would be no trampling in the mud.

Linda Jourgensen contended there seemed to be confusion on both sides, and that the situation needs to be worked out with staff. Linda referred to the City Charter and the interpretation of structures on open space, and how a possible misunderstanding could have occurred. Miss True stated that the Rangers claimed they did not tell Miss True and Mr. Rolofson that they could not build anything on open space. Mike Patton was going to check whether a specific question regarding political demonstrations had been posed to the Rangers.

Linda Jourgensen commented that regarding political demonstrations, there is no statement in the Open Space section of the Charter. She reiterated appreciation to Miss True and Mr. Rolofson for coming to the meeting to bring this matter to the board's attention, and directed staff to proceed with a follow up process. Mark Rolofson offered to work with the staff to pick an appropriate location should the opportunity present itself again in the future.

AGENDA ITEM 7 – Update of Code

Delani Wheeler stated that this informational memo deals with that part of the City Code which contains the definition of open space, and the functions of the board and the department. Delani explained the history of the changes in the Code in relation to the City Charter, and that updates were postponed until the consolidation of Mountain Parks with Open Space. The purpose is to align the City Code with the wording of the City Charter in specific sections listed on page two of the memo. Staff has worked with Jim Tydings, Julia Chase, and Helen Gavin in the City Attorney's office to match the definitions. Jim Tydings explained that this was an administrative process to avoid any potential conflicts in wording between the Charter and the Code. Cross-checking is being performed by a number of individuals, including the city attorney, to ensure accuracy.

Linda Jourgensen referred to the definition of open space land purchased with the sales and use tax. She wondered whether potential revenue from, say, people rounding up on their utility bills could be associated with this code as well as the sales and use tax, or, whether that revenue is something totally different. Mike Patton restated the question as, could a new revenue stream (such as rounding up utility bills) be dedicated to the purchase open space. Jim Tydings will research and inform staff and the board.

Bruce Bland interjected that this update did not change the law, but only updated the wording to make it consistent with the Charter. Jim Tydings confirmed this point.

AGENDA ITEM 8 – Update on Meeting Agendas

The time allocated for Director's Updates was revisited, as issues often arise after the agenda has been published. Staff has instituted the idea that if staff intends to go beyond 20 minutes, then items to be discussed will be presented as a formal agenda item with no action required. It was suggested that Public Participation occur after Matters From the Board. This way, the public can speak after they have already heard the staff updates and input from the board.

Mike Patton suggested that as issues arise after publication of the agenda in the Daily Camera prior to the meeting, staff could send e-mails to the board with new issues. Linda Jourgensen responded that she would prefer staff to bring issues directly to the meeting instead of sending e-mails. This way, the public is informed too.

Jim Tydings explained that board business can be taken out of order by adopting a motion to suspend the rules. A two-thirds vote (although this is usually unanimous consent) enables the Chair to announce that he/she will entertain a motion to suspend the rules and take up another order of business. If there is no objection, the Chair can propose to take up another order of business. This situation occurred this evening, when Public Participation was moved to later in the meeting, instead of taking place at the start of the meeting. There was no objection to the business occurring out of order, and Linda stated she would remember this rule in the future.

ADJOURNMENT – The meeting adjourned at 7:54 p.m.

These draft minutes were prepared by Lara Beckett.